

SIGN OF THE TIMES: PHYSICIAN HAS RESPONSIBILITY TO PROVIDE SIGN LANGUAGE INTERPRETERS UNDER THE AMERICANS WITH DISABILITIES ACT

By: Fran Quarles, Esq., of Quarles Law Firm, LLC



Dr. Cheryl Von Valtier ("Von Valtier"), a primary care physician in Michigan, received a bill from a sign language interpreter who had provided services during a deaf patient's office visit. She paid the bill, and enclosed a letter to the interpreter, which stated in part, "I really can't afford to take care of Mrs. Mayberry at all.... I was paid

\$37.17 by Medicare....I was able to "pocket" \$13.94, that is, until I paid your bill for \$28.00. I certainly hope that the Federal Government does not further slash this outrageous profit margin."

Von Valtier copied her patient, Shirley Mayberry ("Mayberry"), on the letter. Angered, Mayberry filed suit in federal court against Von Valtier, alleging that the physician's actions amounted to discrimination in violation of the Americans with Disabilities Act (the "ADA") and Section 504 of the federal Rehabilitation Act of 1973 ("Section 504"). The court found that Mayberry's allegations were sufficient to proceed to trial. The case did not get that far; the parties entered into a confidential settlement agreement.

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THE ALABAMA LEGISLATURE TAKES A HARD-LINE APPROACH TO PREVENT PRESCRIPTION DRUG ABUSE

*By: Kristen Larremore, Esq., & Holly Hosford, Esq., of
Bradley, Arant, Boulton & Cummings, LLP*



Kristen Larremore



Holly Hosford

In August, Governor Bentley signed into law the Prescription Drug Abuse and Diversion Package consisting of three bills intended to help decrease the abuse of prescription drugs while still permitting the treatment of patients with legitimate pain management needs. According to the Center for Disease Control and Prevention (CDC), more than 12 million people reported using prescription painkillers for nonmedical or un-prescribed purposes in 2010. The three bills are intended to enable the government to better regulate the practitioners that prescribe painkillers and deter patients from acquiring prescriptions for nonmedical use.

House Bill 150 amends the Alabama Prescription Drug Monitoring Program. The bill requires that licensed pharmacies, mail order pharmacies, and licensed physicians provide additional information to the program.

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PRIVATE PRACTICES ARE PUBLIC ACCOMMODATIONS UNDER FEDERAL LAW

Physician practices are businesses. As such, doctors' offices perform cost-benefit analyses similar to Von Valtier's on a regular basis. But they are also considered "public accommodations" under Title III of the ADA. Title III of the ADA applies to all private health care providers, regardless of the size of the office or the number of employees. If a professional office of a doctor, dentist, or psychologist is located in a private home, the portion of the home used for public purposes is considered a place of public accommodation.

In addition, if a practice receives federal financial assistance, such as Medicaid, it is prohibited from discriminating against patients on the basis of disability by Section 504. Violation could result in a suspension or termination of federal financial assistance.

EFFECTIVE COMMUNICATION IS REQUIRED

Title III of the ADA requires places of public accommodation to provide **effective communication**, using auxiliary aids and services if needed to ensure communication with deaf people¹ is as effective as communication with others. Obviously, a physician must communicate effectively with deaf individuals who are seeking or receiving services. However, that duty may extend beyond the actual patient. For example, a deaf parent of a hearing child may require an auxiliary aid to participate in the child's health care. Classes, support groups and other activities open to the public must be accessible for deaf participants as well.

WHAT ARE AUXILIARY AIDS AND SERVICES?

Auxiliary aids and services are tools necessary to provide people with disabilities an equal opportunity to benefit from a publically available service, such as health care. They include, but are not limited to, qualified sign language interpreters, note takers, video remote interpreting (VRI) services, or other methods of making verbal information available to hearing impaired individuals.

In some situations, passing notes might be effective communication. For example, a notepad may be effective communication when a deaf patient goes in for a routine flu shot. However, for lengthy or complex information, notes may be too cumbersome. An interpreter may be a better choice in that instance. Another example may be when individuals use American Sign Language ("ASL") as their primary means of communication. English is a **foreign language** for individuals who primarily use ASL, which is its own language, with its own vocabulary and syntax.²

A physician is allowed to choose the form of auxiliary aid or service which he or she believes will ensure effective communication. However, the doctor should consult with the patient regarding the best form of auxiliary aid or service.

WHO PAYS FOR SIGN LANGUAGE INTERPRETER SERVICES?

If a sign language interpreter is necessary to assure effective communication, the physician must pay the sign language interpreter even if that appointment is financially a net loss to the practice. In addition, a doctor's office is not permitted to impose a surcharge for a sign language interpreter, even if that patient misses the appointment. Of course, the ADA does not prohibit a doctor from charging a standard cancellation fee for missed appointments that is applied uniformly to all patients.

A physician is not, however, required to bear an undue burden or to fundamentally alter his or her medical practice. For example, a payment may be considered an undue burden or fundamental alteration if it would cause a physician to go bankrupt or go out of business. A loss on a single appointment or even providing ongoing care for a patient does not establish an undue burden or fundamental alteration. The overall financial circumstances of the practice must be considered.

LAWSUIT 101

Violation of Title III of the ADA may be enforced by individuals or by the Justice Department. Individuals may seek injunctive relief and attorneys' fees, **but not money damages**.³ An example of injunctive relief would be a physician's practice ordered to pay for a sign language interpreter. Information on how to bring an ADA action can be obtained through advocacy groups, including the National Association of the Deaf ("NAD"). NAD's website contains such topics as "How to File a Complaint." See generally <http://www.nad.org/issues/about-law-and-advocacy-center>.

The Justice Department may bring a lawsuit where there is a "pattern or practice of discrimination," or "issues of general public importance." It may seek injunctive relief, damages on behalf of the patient, and civil monetary penalties (as high as \$55,000 for the first incident and as much as \$110,000 for subsequent violations), but not punitive damages or attorney's fees.

CONCLUSION

While it may not be a physician's first reaction, he or she usually concludes that it is less expensive to hire a sign language interpreter than it is to defend a discrimination lawsuit. On the positive side, a sign language interpreter should result in a higher quality of care, but it does come at a price.

The above is provided for general informational purposes only. You should consult your legal or tax professional for advice specific to your situation.

Ms. Quarles practices law in Birmingham, Alabama, in the civil litigation, health care and domestic relations areas.

¹ Hereinafter, the term "deaf" also includes the hard-of-hearing, for the sake of space. ²Alabama recognizes American Sign Language (ASL) as "the language of the deaf community that is linguistically independent from English." ALA. CODE § 34-16-3(11). ³ A separate action under Section 504 would allow a court to award compensatory but not punitive damages.

Upcoming Events

- Nov. 14 JCMS Annual Business Meeting & Social Event at the Birmingham Museum of Art from 6:00 p.m. to 8:00 p.m.
- Nov. 18 Executive Committee Meeting – 5:30 p.m.
Board of Directors Meeting – 6:30 p.m.
- Nov. 19 The Wayne Finley 811 Breakfast Meeting – Richard Shepard, M.D. will speak on “WWII, Atomic Bomb Experiences...” at 8:30 a.m. in the JCMS Board Meeting.
- Dec. 16 Executive Committee Meeting – 5:30 p.m.
- Dec. 17 The Wayne Finley 811 Breakfast Meeting – Dr. Luis Vasconez will speak on “Plastic Surgery at UAB and the State of Alabama” at 8:30 a.m. in the JCMS Board Room

Contact Juanita Pruitt at 933-8601 or jpruitt@jcmsalabama.org for more information regarding any of the above events.

New Members

Dean George Assimos, M.D.	Urology	Omar I. Massoud, M.D.	Internal Medicine
Marcus Hasting Bell, M.D.	Resident	Kristopher M. McKay, M.D.	Dermatopathology
Susanna E. Carter, M.D.	Obstetrics/Gynecology	Lauren B. O'Connor, M.D.	Resident
Jesanna Cooper, M.D.	Obstetrics/Gynecology	Janis H. P. O'Malley, M.D.	Diagnostic Radiology
Ryan Elizabeth Cowley, M.D.	Resident	Jacqueline T. Perry, M.D.	Family Medicine
Andrew R. Edwards, M.D.	Emergency Medicine	Kartika B. Reddy, M.D.	Internal Medicine
Ashley R. Estes, M.D.	Orthopedic Surgery	Glenn H. Roberson, M.D.	Radiology
Jason D. Hall	Student	Paul Stephen Scalici, Sr., M.D.	Family Medicine
David Earl Hogg, M.D.	Radiology	Sunil Sudarshan, M.D.	Urology
Philip C. Johnson, M.D.	Anesthesiology	Amy Warriner, M.D.	Endocrinology
Peter H. King, M.D.	Neurology	Therese M. Weber, M.D.	Diagnostic Radiology

Jefferson County Medical Society 2013 Armchair Fundraiser For Medical School Scholarships

As you are probably aware, last year the JCMS started a Medical School Scholarship fund at the University of Alabama School of Medicine at UAB. Through our November Banquet and the generous donations made by our sponsors, members and friends of the Society, we were able to raise approximately \$70,000. The Medical School, under the leadership of then-Dean Ray Watts, matched that amount. For the 2013-14 academic year, we were able to award five \$5,000 scholarships to Jefferson County students who have demonstrated financial need.

Before he assumed the Presidency of UAB, Dr. Watts renewed the Medical School's commitment to match funds we raise again this year. Rather than investing significant amounts to host an event, the JCMS Board decided to conduct an “Armchair Fundraiser.” You do not have to worry about buying tickets or attending an event to support the Scholarship program—you can sit in your armchair and simply make a donation! The JCMS will contribute the funds it would have spent to host an event directly to the scholarship program. Our goal is to build the endowment to a level where the interest earned will support annual scholarship awards on an ongoing basis. **If each active JCMS member contributes just \$50, we can increase the endowment by over \$100,000 this year!!!** Your contributions are tax-deductible.

Contributing is easy—just send your check payable to the UAB School of Medicine to the Society at 901 18th Street South, Birmingham, AL 35205. You can also contribute on line at www.uab.edu/JCMSmedscholarship

Thank you very much for supporting our efforts to make medical education possible for those who might otherwise not be able to enroll.



Prescription Drug Abuse: Continued

Mandatory reporters must now report the method of payment used to purchase the controlled substance and provide third-party payor identification if a third party pays for part or all of the controlled substance.

The controlled substance prescription database is a statewide database that maintains information about controlled substance prescriptions. The database was started in 2006 and was accessed more than 30,000 times in the first two years of operation. House Bill 150 expands the category of persons authorized to access the database. Licensed practitioners with authority to prescribe or dispense controlled substances may now designate up to two employees who may access the database on the practitioner's behalf. Additionally, certain licensed assistances to physicians may also access the database as well as licensed pharmacists. The law makes it clear that practitioners are not required to access the database prior to prescribing controlled substances; however, the revised statute specifically notes the ability of licensing boards to impose such a requirement.

The Pain Management Act, passed as House Bill 151, establishes an annual certification requirement for physicians (a doctor of medicine or an osteopathic physician) providing pain management services. "Pain management services" are defined to include "medical services involving the prescription of controlled substances in order to treat chronic nonmalignant pain by a physician who treats pain." Prior to the Act, no singular medical specialty board governed pain management and, accordingly, regulation of prescription pain management treatment was believed to be ineffective. Now the Alabama Board of Medical Examiners will oversee the certification of pain management providers, promulgate rules to govern the practice of pain management, conduct investigations, and take disciplinary actions. The powers provided to the Alabama Board of Medical Examiners under this Act are in addition to its authority as a certifying board pursuant to the Alabama Uniform Controlled Substances Act.

Mandatory annual registration as a provider of pain management services will begin on January 1, 2014, and will require physician submission, among other information, of: (1) proof of current registration with the drug enforcement administration, (2) proof of current registration with the Alabama Prescription Drug Monitoring Program, (3) a current Alabama controlled substances certificate, and (4) the results of a criminal background check. Each applicant

will be required to submit a complete set of fingerprints to the Alabama Board of Medical Examiners who will submit such fingerprints to the Alabama Bureau of Investigation and the Federal Bureau of Investigation for criminal background check purposes. Additionally, designation of a medical director for each pain management practice location who meets certain certification or other educational requirements as specified in the Act will be necessary, and separate registrations will be required for each practice location. Failure to register or obtain an exemption from the Board will be punishable by a fine of up to \$10,000 per violation, or the revocation of registration, or both.

The Pain Management Act also authorizes the Board of Medical Examiners to suspend the registration of a pain management physician without a hearing if the Board finds that there is a danger to the public health, safety, or welfare. As a safeguard, emergency suspensions are effective for no more than 120 days and must be promptly followed by a formal suspension or proceeding. Hospice programs, health facilities maintained by the federal government, and physicians performing work for either category of provider, are exempt from the requirements of the Pain Management Act. Further, the Pain Management Act specifically authorizes the Board of Medical Examiners to contract with the Alabama Physician Wellness Committee, or any other nonprofit professional organization or nonprofit society it deems appropriate to assist with the prevention of abuse, misuse and conversion of controlled substances and the administration of the Act for such purpose.

The criminal portion of the new Prescription Drug Abuse and Diversion Package (House Bill 152) makes doctor shopping for controlled substance prescriptions a Class A misdemeanor. The CDC uses the term "doctor shopping" to refer to the practice of patients obtaining controlled substances from multiple health care practitioners without the prescriber's knowledge of the other prescriptions. The new Alabama law prohibits any person from obtaining a controlled substance from a medical practitioner by intentionally withholding the fact that the person has obtained a prescription for the same or a similar controlled substance in a concurrent time period. A person found guilty of violating this law could face up to a year in jail; a person that commits four or more violations within five years may be found guilty of a Class C felony and face up to ten years in prison. This portion of the Prescription Drug Abuse and Diversion Package was effective as of August 1, 2013.

Opioid and Pain Management CMEs

The National Institute on Drug Abuse worked with Medscape Education to develop two free, interactive, online CME activities (1.25 to 1.75 credits each) about responsible opioid prescribing practices, and best practices for assessing, preventing, and addressing prescription opioid abuse. In these CMEs, NIDA encourages clinicians to use its NIDAMED resources which are specially designed for use in clinical practice to assess patients' drug use and possible referral to drug treatment.

The new training materials, which include video vignettes modeling doctor patient conversations on the safe and effective use of opioid pain medications, are part of NIDA's NIDAMED initiative, created to help physicians, medical interns and residents, and other clinicians understand and address the complex problem of prescription drug abuse. In addition to providing more accessible and self-guided information for healthcare providers, the training modules will also provide an opportunity for healthcare professionals to earn continuing medical education (CME) credits.

You can find out more about these classes by going to this link:

http://www.drugabuse.gov/nidamed/etools?utm_source=OTHER&utm_medium=Web&utm_content=NIDAMED&utm_campaign=NIDAMED



***The Jefferson County Medical Society
invites you to attend its
annual meeting!!***

This year, instead of a dinner, we are hosting an evening at the Museum to give our members an opportunity to spend time with their colleagues.

The School of Medicine will present the Resolution for our Endowed Scholarship and we have invited the five recipients of this year's scholarships to join us that evening.



**THE BIRMINGHAM
MUSEUM OF ART**

**THURSDAY, NOVEMBER 14, 2013
6:00-8:00 p.m. COCKTAILS AND
HEAVY HORS D'OEUVRES**

6:30 p.m. Brief Annual Business Meeting



This year's event is sponsored by ProAssurance. To make reservations please call the Medical Society office at 205-933-8601. Deadline for reservations is noon on Wednesday, November 6, 2013. Due to guarantee requirements at the Museum, we will not be able to accept reservations after that time.

IN MEMORIAM

THE JCMS WANTS TO ACKNOWLEDGE
THE RECENT PASSING OF THE
FOLLOWING JCMS MEMBERS:

GEORGE M. HILL, M.D.

MAY 28, 2013

JOHN M. PACKARD, M.D.

JULY 12, 2013

ROBERT M. BRYAN, M.D.

AUGUST 24, 2013

BRUCE A. HARRIS, JR., M.D.

AUGUST 28, 2013

JOHN W. HARRIS, M.D.

SEPTEMBER 24, 2013

“A parody on steroids!”

– Joseph S. Diedrich, *The Washington Times Communities*

* * *

Healthcare is a mess . . .

bacon is banned . . .

the Government is

running hog-wild!



Olsen's Nation

(A Story of Hope for Change)

Healthcare hijinks by Birmingham author Randy Quarles

Paperback/Kindle Editions on Amazon.com



In The News



Sunena Argo, M.D., joins Alabama Allergy & Asthma Center. She specializes in Allergy, Asthma and Immunology for pediatric and adult patients. Dr. Argo received her medical degree from University of Alabama at Birmingham. She completed her Residency in Pediatrics at the University of Arkansas for Medical Sciences and Arkansas Children's Hospital in Little

Rock. Dr. Argo completed her Allergy & Immunology Fellowship at the University of Missouri Kansas City and Children's Mercy Hospitals. She will be practicing in the Homewood, Hoover, Highway 280 and the new Alabaster practice locations of Alabama Allergy & Asthma Center.

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